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Patent
Attorney's Docket No. 000500-252

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
)
Olle CARLBARK et al.) Group Art Unit: 3761
)
Application No.: 09/529,638) Examiner: C. Anderson
)
Filed: June 5, 2000) Appeal No. 9552
)
For: WAIST BELT FOR ABSORBENT)
GARMENTS)

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BRIEF FOR APPELLANT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This appeal is from the decision of the Primary Examiner dated July 11, 2002, finally rejecting claims 1-3, which are reproduced as an Appendix to this brief.

A check covering the \$320.00 (1402) Government fee and two copies of this brief are being filed herewith.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

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I. Real Party in Interest

The real party in interest in this Appeal is the Assignee, SCA Hygiene Products AB of Göteborg, Sweden.

II. Related Appeals and Interferences

There are no other appeals or interferences known to the Appellants, the Appellants' legal representative, or the assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

III. Status of Claims

There are nine (9) claims pending in this application. Claims 4-9 have been allowed and claims 1-3 have been finally rejected. The rejection of claims 1-3 is being appealed in this Appeal.

IV. Status of Amendments

An Amendment After Final Rejection was filed in this application on October 10, 2002. However, as indicated in the Advisory Action mailed on October 29, 2002, the Examiner refused entry of the Amendment After Final Rejection.

V. Summary of the Invention

The present invention was developed to solve problems created by prior art waist belts for absorbent garments. The prior art waist belts were provided with a degree of stiffness so as to prevent excessive wrinkling of the belt and to facilitate handling of the belt. However, in some cases, the stiffness of the belt caused discomfort to the wearer if the belt cut into or chafed the wearer's skin. In addition, the stiff prior art belts had little pliability and thus did not readily adapt to the shape of the wearer's body. See page 2, lines 28-36.

In order to solve the aforementioned problems, the garment 1 of the present invention comprises an absorbent part 2 and a waist belt 3 which has a longitudinal

direction (L) and a cross-direction (T), and which is attached directly or indirectly to the garment 1. The waist belt 3 includes two separate belts 7, 8 which extend generally in the longitudinal direction. One end of each of the two belts 7, 8 is fastened to the absorbent part 2, and opposite ends of each of the two separate belts 7, 8 extend in respective directions from the absorbent part 2, and are intended to be fastened together around a wearer of the garment 1. The belts have a stiffness that varies in the cross-direction (T) of the belts, wherein the stiffness that varies has an extension in the longitudinal direction (L) that essentially coincides with the length of the belt. See page 6, lines 20-34.

Figure 2 illustrates one embodiment of the present invention, which shows a cross-section of the belt configured so as to provide a stiffness that varies in the cross-direction of the belt. The thinner edges 16, 17, are less stiff than the central portion 18. Another embodiment is illustrated in Figure 3, wherein there are a plurality of mutually adjacent regions 9, 10, 11, 12, 13, 14, and 15 of mutually different stiffnesses. See Page 7, lines 14-28.

VI. Issues

Whether claims 1-3 are unpatentable under 35 U.S.C. § 102(e) over U.S. Patent No. 5,706,524.

VII. Grouping of Claims

For purposes of this Appeal, claims 1-3 shall be grouped together.

VIII. Prior Art

U.S. Patent No. 5,706,524, hereinafter Herrin, discloses a disposable undergarment waistband, and method of forming of the same. The waistband of Herrin comprises a first elongated layer 31 of non-woven material. A plurality of elongated elastic strips 33 is secured to the first layer 31. A second elongated layer 32 is positioned over the elastic strips 33 and is secured to the first elongated layer 31. See Figure 5. The layers 31, 32 may be then folded over on themselves to provide a belt having several layers of material.

As illustrated in Figure 3 of Herrin, fastener portions 36, 37 are of a hook and loop type fastener and are secured at each end of the waistband 30. The fasteners 36, 37 are adapted so as to fasten with fasteners 22 provided on the outer surface of the absorbent part of the undergarment. See Figure 1.

IX. Examiner's Rejection

Claims 1-3 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Herrin. The rejection alleges that Herrin discloses a garment 20 and a waist belt 30. The waist belt 30 comprises two separate belts, as shown in Figure 2, which extend in the longitudinal direction. The rejection further alleges that one end of each of the two separate belts is fastened to the absorbent part 21, as shown in Figure 1, and the opposite ends of the two separate belts are fully capable of being fastened together around the wearer of the garment 20. The rejection further states that the waist belt 30 comprises two sheets 31 and 32 with elastic members 33 attached to the sheets, running parallel to each other in the longitudinal direction of the waist belt 30. The sheets 31 and 32 are inherently of a different stiffness than the elastic members 33, giving the waist belt 30 a stiffness that varies extending in the longitudinal direction of the waist belt 30.

X. Appellants' Argument

Appellants submit that the outstanding rejection is based on a factual misunderstanding of the prior art. The rejection alleges that the opposite ends of the two belts in Herrin are "fully capable of being fastened together around the wearer of the garment 20." As set forth in column 6, lines 37-41, the fasteners 36, 37 of Herrin are intended to attach to elements 22, which can be seen in Figures 1 and 2. Clearly, there is no teaching or suggestion in Herrin that the fastener 36 can in any way attach to the fastener 37. Thus, the opposite ends of the two separate belts are not capable of being fastened to each other with the fasteners 36, 37 around the wearer of a garment.

Furthermore, there is nothing to suggest that the belts 30 of Herrin are made of a material to which the fasteners 36, 37 can attach. The belt materials 31, 32 are disclosed

as nonwoven. However, there is no indication in the patent that the particular material of the belts 30 can adhere to a hook and loop-type fastener, absent adhesive or some other means.

Furthermore, it is clear from the specification and figures of Herrin that the ends of the belts 30 are not intended to even reach each other. See, for example, Figure 1 of Herrin, wherein there is a sizable gap between the free ends of the belts 30.

In a telephone interview with the Examiner, the Examiner indicated that the belts 30 disclosed by Herrin are fully capable of being tied together around the waist of a wearer. See the Interview Summary dated November 19, 2002. However, this position is totally lacking in merit and is not credible. In view of the fact that the ends of the belts 30 are illustrated as not even being capable of reaching each other, there is simply no way that the ends of the belts can be tied together, as alleged by the Examiner.

Furthermore, even if the ends of the belts 30 could reach each other, there would be no teaching or suggestion of tying the belts together, instead of securing them to their intended fasteners 22. Note Section 2143.01 of the Manual of Patent Examining Procedure, wherein it indicates that a proposed modification of a reference in a rejection cannot alter the principle of operation of the reference. Clearly, Herrin intends that the ends of the belts 30 be secured to the fasteners 22 on the absorbent body of the garment. There is no intention or suggestion in Herrin that the ends of the belts could reach each other or that they be tied together.

In addition, even if the belt's ends could reach each other and were tied together, as alleged by the Examiner, there would be no way for the front portion 21 of the absorbent body to be secured to the belts 30. The front portion 21 of the absorbent body is supported by the belts 30 because the fasteners 22 on the front portion 21 attach to the fasteners 36, 37 on the belts. Thus, if the belt ends were tied together, there would be no way to support the front portion 21 of the absorbent body of the garment. Thus, the Examiner's modification of Herrin would render the prior art unsatisfactory for its intended purpose. See Section 2143.01 of the Manual of Patent Examining Procedure.

Accordingly, Appellants submit that there is no teaching or suggestion in Herrin of the claimed invention, and in particular of a garment having two separate belts, the ends of which are intended to be fastened together around a wearer of the garment. The Examiner's proposed modification of Herrin would alter the principle of operation of the Herrin reference and would render the teachings of Herrin unsatisfactory for its intended purpose.

Appellants further submit that the language requiring the ends of the belts to be fastened together around a wearer of the garment is significant in that the present invention has particular application to situations wherein the belt forms a large part of the waist portion of the garment. Specifically, according to the present invention, the separate belts 7, 8 completely inscribe the waist of the wearer, except for the back portion 4 of the absorbent body. In view of the extensive length of the belts 7, 8, it is particularly important for the belt to be made in a comfortable manner, i.e., as proposed by the present invention. In contrast to the present invention, wherein the belt 30 only extends around the sides of the wearer, as taught by Herrin, and not completely around the front of the wearer, it is not as important for the belt to be made in a comfortable manner.

Accordingly, Herrin not only does not teach or suggest the present invention, Herrin is not particularly relevant to the present invention.

Accordingly, the rejection of claims 1-3 is improper and should be withdrawn.

XI. Conclusion

For the reasons set forth in this Appeal Brief, Appellants respectfully request that the rejection of the Examiner be withdrawn.

Respectfully submitted,

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APPENDIX A

The Appealed Claims

1. A garment comprising an absorbent part and a waist belt which has a longitudinal direction and a cross-direction and which is attached directly or indirectly to said garment, wherein said belt includes two separate belts which extend generally in said longitudinal direction, one end of each of the two separate belts is fastened to the absorbent part, and opposite ends of each of the two separate belts extend in respective directions from said absorbent part and are intended to be fastened together around a wearer of the garment, which belts have a stiffness that varies in the cross-direction of the belts, wherein the stiffness that varies has an extension in the longitudinal direction that essentially coincides with the length of the belts.

2. A garment according to claim 1, wherein the belts comprise in their cross-direction at least two mutually adjacent regions of mutually different stiffness.

3. A garment according to claim 2, wherein the belts have a longitudinally extending central part that is stiffer than at least one longitudinally extending edge-part of said belts.